legal theory which forms the basis of the regular courses of instruction. The course in "Office Practice" has this purpose in view. Four practical problems have been laid before the members of each of the three classes in the Law School; and no student can be advanced to a higher class, or graduated, who has not solved the problems to the satisfaction of the supervisor of the course. For instance, members of the third-year class will be required, before graduation, to write a will, validly making given dispositions of the fictitious testator's property; to draw a mortgage; to form a corporation, preparing the Certificate of Incorporation, the notice which must be published, proof of publication thereof, calls for the first meetings of stockholders and directors, and minutes of the first meeting; and to prepare all the papers necessary to properly bring a suit in assumpsit. For the first and second year classes similar problems have been prepared.

The number of students in attendance at the Law School is the largest since 1902. The registrations in the various classes are as follows: Third year class, 81; Second year class, 100; First year class, 175. There are also registered, eight special students, one partial student and two graduate students, bringing the total registrations up to 367. Only once before in the history of the Law School has the attendance been so large.

CORPORATIONS—ULTRA VIRES ACTS—ACCOMMODATION PAPER. —In a proceeding in equity against an insolvent corporation the receivers reported, in respect to claims presented by several banks arising on negotiable promissory notes, that the defendant corporation was an accommodation indorser. The Court held that although the execution or indorsement of accommodation paper is an act beyond the scope of corporate authority, the innocent holder for value of such paper could recover on it. It appeared, however, on all the evidence, that the banks could not be considered holders without notice.[1]

"The proposition is well supported by authority that it is *ultra vires* of a corporation to execute accommodation paper or to enter into contracts of guaranty or suretyship not in furtherance of its business, unless given express authority to do so."[2] Counsel for the receivers urged that the Court declare the paper void *ab initio*, adopting the doctrine stated in an opinion by Mr. Justice Gray in respect to contracts *ultra vires*. "The charter of a corporation * * * is the measure of its powers * * *. All contracts

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[1] Johnson v. Johnson Bros., 80 Atl. Rep. 741 (Me. 1911).

[2] (*a*) Note to *In re* Assignment Mutual, etc., 70 Am. St. Rep. 164; (*b*) 3 Thom. Corp., 2nd Ed., § 2225 and cases cited; (*c*) 7 Am. and Eng. Ency. Law, 2nd Ed., 793; (*d*) 1 Mora. Corps., 2nd Ed., § 423 and cases cited.

made beyond the scope of those powers are unlawful and void, and no action can be maintained upon them in the courts, and this upon three distinct grounds; the obligation of everyone contracting with a corporation to take notice of the legal limits of its powers; the interest of the stockholders not to be subjected to risks they have never undertaken; and above all, the interest of the public that the corporation shall not transcend the powers conferred upon it by law." [3] The Court, however, refused to apply this rule, characterizing it as too rigid. Quoting from the opinion in a recent case, it said: "It would see from the later opinion of courts and jurists that the doctrine of *ultra vires* is thought to have been heretofore too often and too strictly applied, especially in cases of contracts of corporations (other than municipal, at least), not in themselves harmful to the public." [4]

That such is the tendency is undoubtedly true. Mr. Freeman [5] says: "After a study of the cases * * * the impression is forced upon us, that the doctrine of *ultra vires* as applied to contracts of private corporations, has almost lost its meaning. The undermining of the foundation upon which it has rested from its inception has proceeded simultaneously from different directions until the doctrine itself seems almost ready to fall under its own weight." Mr. Seymour D. Thompson, after tracing the development of what he calls "The Revolt against the Doctrine of Ultra Vires," declares: "My own view is that the doctrine of *ultra vires* has no proper place in the law of private corporations except in respect of contracts which are bad in themselves, the making of which is prohibited by considerations of public morality, of justice or of a sound public policy, and which stand upon such a footing that neither party can be regarded as innocent or blameless in entering into them." [6] Mr. Lilienthal says, "We have seen how the doctrine of *ultra vires,* irrespective of the question of State interference, has developed or rather disintegrated"; [7] while Mr. George Wharton Pepper acknowledges that, "If we return from the domain of theory to our final survey of existing conditions in American courts, it seems hard to escape a conclusion favorable to the view which results in the enforcement, in so many cases, of unauthorized and prohibited contracts." [8]

It is submitted, however, that it was unnecessary to consider the "rigid" or the "more reasonable" doctrine. It is established beyond controversy that "notwithstanding the rule that corporations have no power to make or endorse negotiable paper for accommoda-

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[3] Central Transp. Co. v. Pullman Car Co., 139 U. S. 24 (1890).

[4] Oakland Electric Co. v. Union Gas and Electric Co., 107 Me. 279 (1910).

[5] *Supra,* note 2 (*a*).

[6] 28 Am. Law Rev. 397, 398.

[7] 11 Har. L. R. 396.

[8] 9 Haw. L. R. 271.

tion, such paper will be good in the hands of an innocent purchaser for value without notice of such fact." [9] "Unless the corporation be specially authorized to do so, the execution or endorsement of accommodation paper for the benefit of a third person is an act beyond the scope of its corporate authority but * * * a *bona fide* holder taking without notice of its character could enforce it." [10]

The rule is stated flatly in an early case as an incontrovertible proposition needing no citation of authorities,[11] but it is admittedly an exception to the general doctrine of *ultra vires* in favor of negotiable paper, and a rather difficult one to support by any rule of logic. Nevertheless an analogy is found in cases where an agent is given authority to execute commercial paper in the business of his principal and in excess of his authority he executes paper for his own benefit. In such case the tendency throughout the United States is to allow the innocent holder for value to recover against the principal.[12] This is an exception to the general rule exempting the principal from liability for acts of an agent beyond the scope of his authority. In view of the fact that both parties are innocent and both have trusted the fraudulent agent it may well be asked: Why should the principal be liable? It may be said that the principal inaugurated the sequence of events causing the plaintiff to act to his detriment by conferring power upon the agent. But this is not true in the particular instance mentioned.

The same arguments are applicable to the case where a corporation issues accommodation paper *ultra vires*. It is said that it is the obligation of every one contracting with a corporation to take notice of the legal limitations of its powers. It is well settled that "private corporations, unless prohibited by charter or statute have the implied power to execute promissory notes or other evidences of indebtedness, in payment or settlement of all debts, in the course of the execution of their corporate purposes." [13] A corporation having the power to issue notes, exercises that power wrongfully, by issuing accommodation paper. This is unknown to the party contracting with the corporation and as a practical matter is incapable of discovery by him. Again there is a balancing of equities between the innocent holder for value and the corporation, *i. e.*, the stockholders, who are also innocent. The law has favored the former, thus conforming to the well established policy of the law merchant of avoiding any rule tending to hinder the free circulation of negotiable paper.

E. H. B., Jr.

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[9] 3 Thom. Corp., 2nd Ed., § 2228 and cases cited.
[10] 1 Daniel Neg. Inst., 4th Ed., §386.
[11] Bird v. Daggett, 97 Mass. 494 (1867).
[12] North River Bank v. Aymar, 3 Hill (N. Y.) 262 (1842).
[13] 3 Thom. Corp., 2nd Ed., §2185.